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3:01-CV-01403 MARIN V. SHAW

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\*AMDCMP.\*

Mel M. Marin  
Box 45675  
San Diego, CA 92145

5/28/2001

Plaintiff  
Pro Se

FILED  
03 OCT 10 AM 10:24  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY: *[Signature]* DEPUTY  
Nunc pro tunc  
10/08/03

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEL M. MARIN,

Plaintiff,

v.

STEPHEN SHAW;  
and SUPPA, TRUCCHI  
& HENEIN, LLP,  
A CALIFORNIA PARTNERSHIP  
AND  
THE UNITED STATES (ARMY)

Defendants,

Number 01-CV-1403-K

FIRST AMENDED COMPLAINT  
FOR MALPRACTICE;  
BREACH OF FIDUCIARY DUTY  
AND  
FOR DECLARATORY JUDGMENT  
(FOR VIOLATION OF THE  
SOLDIERS' AND SAILORS'  
CIVIL RELIEF ACT,  
50 APP. U.S.C. § 581, AND  
10 U.S.C. § 1034)

JURY DEMANDED

Comes now plaintiff on his own behalf bringing causes of action against defendants as follows:

VENUE AND JURISDICTION

1. Plaintiff is a resident and citizen and domiciliary of Pennsylvania, holds a PA driver's license, and intends to remain in PA to work and live.
2. Non-U.S. defendants are San Diego residents and California citizens, and the law firm of SUPPA, TRUCCHI & HENEIN, LLP is a co-conspirator and joint feisor with defendant SHAW in every act described below.
3. Plaintiff is entitled to and claims over \$300,000 from each non-U.S. defendant, and is entitled to and claims declaratory judgment from the United States.
4. Any limitations time to file this action was tolled under the Soldiers' Relief Act.

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**FIRST CAUSE OF ACTION**  
**FOR BREACH OF FIDUCIARY DUTY AGAINST NON - U.S. DEFENDANTS**

5. In about March 2000 defendant met with plaintiff and plaintiff's father in La Jolla, California, for the purpose of retaining defendant to represent plaintiff and his father in an on-going action in the Superior Court.

6. During that meeting, plaintiff confided information to defendant that is not generally known among either the legal field in San Diego, nor the community at large, to wit:

(a) the plaintiff is a reserve soldier with a record involving classified military duty which the United States has a history of refusing to confirm; (b) because the United States orders plaintiff to temporary duty in other states, if opposing counsel do not allow for extensions of time to respond to motions as is the courtesy, California judges have and will punish plaintiff for missing hearings, (c) because plaintiff's mail to different duty locations takes so long, plaintiff does not even receive mail for weeks or months after a court issues any order, so if any defendant wanted to destroy any case against plaintiff, all the defendant has to do is make any motion to shorten time to rule and the case will be over before plaintiff gets off duty and even receives his mail.

7. At the time of the March 2000 meeting, plaintiff was threatened with or had actually been found in contempt by Judge Wickersham for plaintiff's request to extend time on a court deadline followed by plaintiff's refusal to submit his entire classified military record to Judge Wickersham. Plaintiff also had another active case, Marin v. HFC, in which the state judge was refusing additional extensions of time and needed an attorney for that one, confiding that the HFC judge may not believe plaintiff with no support from federal offices.

8. Defendant Shaw declined to represent this plaintiff in any action, because of the inability to pay in advance any significant amount of money, because it is hard to prosecute any case missing hearings without verification from the United States, and because of Mr. Shaw's belief that it is virtually impossible to have a fair civil trial in front of Judge Wickersham and recommended that plaintiff and his father dismiss that case immediately. Plaintiff did so.

9. However, defendant Shaw then took that same information held in confidence and

1 used that information against plaintiff in the action Marin v. HFC to engineer the dismissal of that  
2 action against plaintiff.

3 10. Specifically, defendant Shaw became counsel of record of HFC in about June 2000,  
4 about which plaintiff became aware for the first time in a hearing on about July 18, 2000 for leave  
5 to set a discovery motion for HFC's refusal to respond to discovery.

6 11. Then, when plaintiff made a motion to that court to postpone the hearing date for  
7 the discovery motion, and to extend dates to amend his complaint because of military duty,  
8 defendant Shaw used the confidential information against plaintiff, to wit: instead of agreeing to  
9 extend time as a courtesy as is normal in the first instance with any attorney in the community,  
10 Mr. Shaw waited until plaintiff was away on his military duty, and then made motion for  
11 attorney's fees knowing plaintiff would not receive the motion because plaintiff was not at his  
12 address during duty, and also during the same duty time made a quick *ex parte* "walk-in" motion  
13 to dismiss for plaintiff's failure to appear at the hearing knowing plaintiff would not receive that  
14 motion until it was too late and knowing that plaintiff's federal military superiors would not verify  
15 the duty as plaintiff told Mr. Shaw in confidence in March 2000.

16 12. Because plaintiff was on active military duty and could not receive his mail and  
17 could not appear and could not respond, and because the United States refused to verify,  
18 plaintiff's case was dismissed in September 2000 and plaintiff was sanctioned in excess of \$27,000  
19 as claimed attorneys' fees in about March 2001; and assessed an appellate charge as well, and the  
20 state court judge published an order suggesting plaintiff was a professional liar.

21 13. During plaintiff's hearing for motion to vacate the dismissal, the judge  
22 acknowledged that the basis of the large sanctions was the confidential information that plaintiff  
23 had provided to Mr. Shaw: that the United States refused to verify plaintiff's duty.

24 14. The effect of that sanction was the use of that order by other courts to cause the  
25 loss of other legal actions by plaintiff valued at \$100,000, the use of that order and the reputation  
26 moving from it to block plaintiff's civilian legal career valued at \$100,000, the use of that public  
27 reputation to prevent plaintiff's receipt of a federal security clearance, and the prevention of  
28 plaintiff's ability to finish 20 years of reserve military duty and reach his retirement pay valued in

1 excess of \$100,000.

2 15. Mr. Shaw wilfully and deliberately used that same confidential piece of information  
3 confided to him by plaintiff, against plaintiff, to secure employment which Mr. Shaw did not have  
4 in March 2000.

5 16. That same piece of private information was the actual and proximate cause of the  
6 dismissal and sanction of plaintiff, and the proximate cause of the career damage to plaintiff.

7 17. The time within which to file this action was and is tolled for at least 90 days, from  
8 September to December 2000 due to plaintiff's active military duty, pursuant to  
9 federal statute:

10 The period of military service shall not be included in computing any  
11 period now or hereafter to be limited by any law, regulation, or order  
12 for the bringing of any action or proceeding in any court . . . by or  
13 against any person in military service . . .

14 50 App. USC §525.

15 18. Plaintiff did not at any time waive objection to Mr. Shaw's appearance in the HFC  
16 action because he notified the court of his challenge when plaintiff first learned about Mr. Shaw's  
17 representation in July 2000, and plaintiff was not allowed to set a formal hearing to remove Mr.  
18 Shaw before plaintiff left for required military duty in August 2000, when dismissal then made the  
19 motion unavailable.

20 19. WHEREFORE, plaintiff is entitled to and claims the value of the losses, or  
21 approximately \$300,000 from each and every non-U.S. defendant, jointly and severally, with an  
22 additional amount to be added as punitive damages jointly and severally, as the jury may allow.

23 **SECOND CAUSE OF ACTION**  
24 **FOR MALPRACTICE AGAINST NON - U.S. DEFENDANTS**

25 20. Plaintiff incorporates previous allegations to this cause of action.

26 21. Defendant Shaw made no attempt whatsoever to locate plaintiff, whose contact  
27 information defendant had, to seek approval for defendant's representation of HFC and usage of  
28

1 the confidential information in that case against plaintiff.

2 22. Defendant attorney Shaw thereby violated California Rules of Professional  
3 Conduct and committed malpractice.

4 23. WHEREFORE, plaintiff is entitled to and claims the value of the losses, or  
5 approximately \$300,000 from each and every non-U.S. defendant jointly and severally, and an  
6 additional amount to be added as punitive damages jointly and severally, as the jury may allow.

7  
8 **THIRD CAUSE OF ACTION**  
9 **FOR DECLARATORY JUDGMENT AGAINST THE UNITED STATES**

10  
11 24. Plaintiff incorporates previous allegations to this cause of action.

12 25. The failure of the United States to verify plaintiff's duty at plaintiff's request,  
13 constitutes a violation of federal statute, to wit: 50 App. U.S.C. § 581 of the Soldiers' And  
14 Sailors' Civil Relief Act.

15 26. Because no soldier is allowed a damages action against the United States or any  
16 military officer, plaintiff seeks only declaratory judgment against the United States (Army),  
17 finding that it violated federal statute by refusing to verify plaintiff's military duty, and further  
18 violated federal statute 10 U.S.C. § 1034 by a custom and practice of punishing this plaintiff or  
19 any soldier for seeking to enforce rights which the United States Congress gives soldiers under  
20 the Soldiers' Act.

21 27. WHEREFORE, plaintiff is entitled to remedy as claimed above, and verifies this  
22 complaint.

23  
24 DATED: May 28, 2003

